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2004 APR -1 P 3:22

U.S. DISTRICT COURT  
DISTRICT OF MASS

April 1, 2004

Seth Berman  
United States Attorney's Office  
One Courthouse Way  
Boston, MA 02210

Re: United States v. Derek Frazier, Dkt# 03-10368-RCL

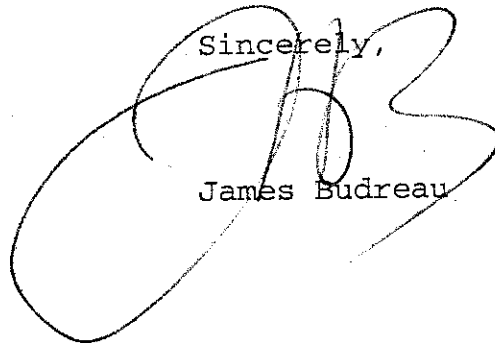
Dear Seth:

In accordance with the local rules and our most recent conversation, I am asking that you dismiss Count II [Title 18 Sec. 924(g)(9)] as being duplicative with Count I [Title 18 Sec. 924(g)(1)] and based upon double jeopardy principles. See Fifth Amendment to the United States Constitution. Given this plain violation of the Double Jeopardy Clause, I am requesting that you elect to proceed on one of these two counts and dismiss the other count. See United States v. Wilkins, 2004 WL 516786 (10<sup>th</sup> Cir. March 17, 2004) attached as Addendum A.

Additionally, I will be filing a Motion to Suppress based upon the failure of law enforcement to possess a copy of the warrant during the search of the premises in question. Given that this was a state search warrant, Article 14 of the Massachusetts Declaration of Rights applies and requires the suppression of evidence under such circumstances. See Commonwealth v. Guaba, 417 Mass. 746 (1994). If you can confirm with the officer in advance that he did not possess the warrant when he searched the apartment, then I will not need to file this motion.

Given that my Motions are due on March 16, 2004, I want to ask that you respond to these requests as soon as reasonably possible.

Sincerely,

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the bottom.

James Budreau